

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MOVIE GALLERY US, LLC,

Plaintiff,

v.

**MARK W. GREENSHIELDS,
ASSOCIATED SOURCING, AND
ASSOCIATED SOURCING
HOLDINGS, INC. d/b/a VIDEO
LIBRARY,**

Defendants.

**CIVIL ACTION NO.:
2:07-cv-01032-MHT-WC**

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO
CONTINUE HEARING ON MOTION FOR PRELIMINARY
INJUNCTION**

Defendants respond as follows to Plaintiff's motion to continue the hearing on its motion for a preliminary injunction.

As indicated in the subjoined declaration of counsel, Plaintiff called at mid-day in Seattle on January 7, 2008 asking that Defendants stipulate to continuing the hearing on Plaintiff's motion for preliminary injunction to March 5, 2008 but asked for a response by the end of that day Central Time. It was not possible to check schedules of Defendants' Alabama counsel and the schedule of the client by Plaintiff's self-imposed deadline, so counsel called to advise Plaintiff's counsel of that fact. Plaintiff's formal motion was filed later that evening.

While Defendants do not see the need to continue the hearing, if the Court is inclined to continue it, they respectfully urge to Court to continue it to a date other than March 5, 2008, the date requested by Plaintiff. Defendants request that, if the hearing is rescheduled, the hearing be set for a date that will enable Defendant Mark Greenshields to attend the hearing in person should that be necessary. A suggested date is set forth in the subjoined declaration of counsel.

Respectfully submitted this 10th day of January, 2008.

s/ Philip E. Cutler

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**DECLARATION OF PHILIP CUTLER IN SUPPORT OF DEFENDANTS' RESPONSE
TO PLAINTIFF'S MOTION TO CONTINUE HEARING ON MOTION FOR
PRELIMINARY INJUNCTION**

Philip E. Cutler declares, under penalty of perjury under the laws of the State of Washington and the United States:

1. I am an attorney licensed to practice law in the State of Washington and have been admitted *pro hac vice* to practice before this Court in this case. I am one of the attorneys for Defendants and, unless otherwise stated, make this declaration on personal knowledge. I am over the age of 18 years and otherwise competent to testify to the matters set forth herein.
2. About 12 noon Pacific Time on January 7, 2008 one of Plaintiff's attorneys, Ethan McDaniel phoned me asking if Defendants would agree to move the hearing on Plaintiff's Motion for Preliminary Injunction to March 5, 2008, with a corresponding adjustment in the briefing schedule. I replied that, while the date was clear on my own calendar, I would need to check with co-counsel in Alabama and with Mr. Greenshields. Mr. McDaniel indicated that he needed to have an answer by the end of his day.
3. I immediately communicated by email with Defendants' lead co-counsel, Charles Stewart, and with Mr. Greenshields concerning Plaintiff's request. I was not able to follow up by telephone with them until later in the afternoon. It was clear to me that a March 5th hearing date was problematic due to schedule conflicts and I was unable, in the short time allotted to me, to work up another date proposal. I therefore called Mr. McDaniel back shortly before 5pm Central Time; he was not available, so I left

him a voicemail to the effect that I was simply unable to secure agreement to either the March 5th date or another hearing date within the time Mr. McDaniel gave me.

4. In the interim, I have confirmed with Mr. Greenshields, who has child-care/custody issues that constrain his availability to travel, that, if the Court is inclined to continue the hearing on Plaintiff's motion (the original February 5th date still works best for Defendants), Mr. Greenshields would be available for a hearing in Alabama on March 11th, allowing him to travel to Alabama on March 9th or 10th and return late in the day on March 11th, assuming March 11th works for the Court and all counsel. Less desirable from Mr. Greenshields' standpoint, but still potentially doable (assuming flights are available to and from Alabama), are the following dates:
 - a) March 4th...allowing him to travel to Alabama on March 3rd and return late in the day on March 4th;
 - b) March 18th... allowing him to travel to Alabama on March 17th and return late in the day on March 18th.
5. I will have my calendar available for the oral hearing at 9am Central Time January 11th and expect that Alabama co-counsel will have their calendars available as well.
6. This declaration is personally signed by me at Seattle, Washington on January 10, 2008.

s/ Philip E. Cutler

Philip E. Cutler (WSBA 5084)

**Of Attorneys for Mark W. Greenshields,
Associated Sourcing, and Associated
Sourcing Holdings, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jeffery M. Grantham
J. Ethan McDaniel
M. Lee Huffaker
Maynard Cooper & Gale, P.C.
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and all counsel of record for Defendants.

s/ Philip E. Cutler

**Of Attorneys for Mark W. Greenshields,
Associated Sourcing, and Associated
Sourcing Holdings, Inc.**